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NO. 93-1059

Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1993

WILEY JACKSON MARSH,

Petitioner,

vs.

PENROD DRILLING CORPORATION AND PENROD DRILLING COMPANY,

Respondents.

Petition for a Writ of Certiorari to the Supreme Court for the State of Louisiana

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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41PP

QUESTION PRESENTED FOR REVIEW

1. Whether there are "special and important reasons" for this Honorable Court to grant Petitioner's petition for a writ of certiorari where:

   a. There is no conflict between the decision of the Supreme Court of the State of Louisiana with the decision of any other United States court of appeals, nor with the decision of any state court of last resort;

   b. The decision of the Supreme Court of the State of Louisiana did not depart from the accepted and usual course of judicial proceedings;

   c. There is no conflict between the decision of the Supreme Court of the State of Louisiana regarding the federal question at issue and the decision of another state court of last resort or of a United States court of appeals;

   d. The decision of the Supreme Court of the State of Louisiana does not address an "important question

of federal law" which should be settled by this Honorable Court; and

e. The decision of the Supreme Court of the State of Louisiana did not decide a federal question in a way that conflicts with applicable decisions of this Honorable Court.

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No. 93-1059

In the Supreme Court

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OCTOBER TERM, 1993

WILEY JACKSON MARSH,

Petitioner,

vs.

PENROD DRILLING CORPORATION AND PENROD DRILLING COMPANY,

Respondents.

Petition for a Writ of Certiorari to the Supreme Court for the State of Louisiana

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Penrod Drilling Corporation and Penrod Drilling Company (hereinafter referred to as "Penrod") submit this

Brief in Opposition to the Petition for Writ of Certiorari of the Petitioner, Wiley Jackson Marsh, which requests this Honorable Court issue a Writ of Certiorari to review the Judgment and Opinion of the Louisiana Fourth Circuit Court of Appeal, issued on May 27, 1993, and the Supreme Court of the State of Louisiana's Denial of Application for Writs of Review, issued on October 1, 1993.

OPINIONS AND JUDGMENTS BELOW

The Opinion of the Supreme Court of Louisiana is reported at 625 So.2d 180 (La. 1993) and reprinted at Appendix A. The Opinion of the Louisiana Fourth Circuit Court of Appeal is reported at 619 So.2d 1124 (La. App. 4th Cir. 1993) and reported at Appendix B. The Opinion of the Civil District Court for the Parish of Orleans is reprinted at Appendix C.

STATEMENT OF JURISDICTION

The Supreme Court of Louisiana entered judgment on October 1, 1993. The Petitioner has invoked the jurisdiction

of the Supreme Court of the United States under 28 U.S.C. § 1257(A).

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES, AND REGULATIONS INVOLVED

The following statutory provisions involved in this case are reprinted at Appendices D, E and F; the Jones Act, 46 U.S.C. § 688 (West 1988); Federal Employers Liability Act, 45 U.S.C. § 51 (West 1988); La. Rev. Stat. 13:4203 (West 1993).

STATEMENT OF THE CASE

The Petitioner, Wiley Jackson Marsh, brought this action seeking recovery under the Jones Act based on the alleged negligence of Penrod, for the alleged unseaworthiness of Drilling Rig PENROD 60, and for the arbitrary and capricious termination of maintenance and cure. Prior to trial on the merits, Petitioner dismissed his general maritime claims based on unseaworthiness and wrongful termination

of maintenance and cure. Therefore, the only claim asserted at trial was Petitioner's Jones Act claim.

In his Petition filed in Civil District Court for the Parish of Orleans, the Petitioner contended that on or about January 28, 1986, he was employed by Penrod on Drilling Rig PENROD 60, a "jack-up" barge. The Petitioner further asserted that while engaged in his duties, he was injured when he attempted to move a 4,000 pound drill collar with a bent prybar. According to the Petitioner, the prybar slipped and hit him on his left ear. The Petitioner argued the drill collar he was moving should have been moved with a crane, and he asked his supervisor to reattach the crane to the drill collar and move it. The Petitioner averred the supervisor refused to reattach the crane to the drill collar and told him to move the drill collar as best he could with a prybar.

Trial was held in this matter from July 21, 1992 through July 24, 1992. After deliberation, the jury returned a verdict finding both Penrod and the Petitioner negligent in causing the accident and apportioning fault equally between Penrod and the Petitioner. The jury returned a verdict

awarding the Petitioner lump sum damages under the Jones Act, 46 U.S.C. § 688 (West 1988), in the amount of $125,000.00, which resulted in a $62,500.00 award for the Petitioner. *See* Jury Verdict, attached hereto as Appendix G. The jury was not asked, nor did it award, the Petitioner prejudgment interest from the date of the incident in suit, January 28, 1986, or from the date of judicial demand, December 20, 1988. On July 24, 1992, the state district court signed a judgment awarding the Petitioner interest from the date of judicial demand on the damages awarded to him under the Jones Act by the jury. *See* Judgment, attached hereto as Appendix C.

On August 4, 1992, Penrod moved for a partial new trial on the issue of prejudgment interest awarded to the Petitioner on the basis prejudgment interest is not recoverable in a Jones Act case tried to a jury. The state district court denied Penrod's Motion for Partial New Trial on August 14, 1992. On September 14, 1992, Penrod filed a Motion for Suspensive Appeal, which was granted by the state district court on the same day. On appeal, Penrod again

asserted that the law is clear -- a plaintiff is not entitled to prejudgment interest in a Jones Act case tried to a jury. The Louisiana Fourth Circuit Court of Appeal rendered a decision on May 27, 1993, adopting the Respondent's reasoning and reversing the state district court's award of prejudgment interest. *See* Louisiana Fourth Circuit Court of Appeal Decision, attached hereto as Appendix B. On June 23, 1993, the Petitioner applied to the Supreme Court of the State of Louisiana for a Writ of Review on the Louisiana Fourth Circuit Court of Appeal's decision. The Louisiana Supreme Court denied the Petition for Writ of Review on October 1, 1993. *See* Denial of Petition for Writ of Review, attached hereto as Appendix A.

REASONS FOR DENYING THE WRIT

Summary of Argument

The Jones Act allows a seaman plaintiff to sue for death or personal injury either in the federal court under admiralty jurisdiction or in a state or federal court under legal jurisdiction, if the seaman meets other jurisdictional

requirements. If a Jones Act seaman elects to proceed at law, he has a right to a trial by jury, but must forego a claim for prejudgment interest; if a Jones Act seaman elects to proceed in admiralty, he can assert a claim for prejudgment interest but cannot have a trial by jury.

When a Jones Act claim is brought in state court and tried to a jury, federal law, not state law, governs the plaintiff's ability to recover prejudgment interest. Therefore, La. Rev. Stat. 13:4203, which provides for prejudgment interest on all tort actions, does not apply in this case. Rather, since federal law as to interest in a Jones Act judgment is substantive, federal law controls in this case. Federal law provides that in a Jones Act case tried at law (rather than in admiralty), prejudgment interest is not available. Thus, the Petitioner here is not entitled to prejudgment interest.

When a judgment is entered in a Jones Act case on a jury verdict, the judge does not possess the authority to award prejudgment interest; rather, the factual question of whether the plaintiff merits prejudgment interest must be submitted

to the jury. Failure to do so invalidates any such award given by the court. Further, when damages in a Jones Act case tried to a jury are made in a lump sum and no quantification of the amounts awarded for each element of damage is possible, a prejudgment interest award made with respect to the lump sum damages award is reversible in its entirety.

Argument

The main thrust of Petitioner's argument is that he should be awarded prejudgment interest by virtue of La. Rev. Stat. 13:4203, which states: "Legal interest shall attach from date of judicial demand, on all judgments, sounding in damages, '*ex delicto*' which may be rendered by any of the courts." Petitioner submits this Louisiana state law should govern the award of prejudgment interest in this case, not federal law. However, the law is clear when a Jones Act claim is brought in a state court and tried to a jury, federal law, not state law, governs the plaintiff's ability to recover prejudgment interest. *Theriot v. J. Ray McDermott & Co.*, 742 F.2d 877 (5th Cir. 1984); *Barrios v. Louisiana Const. Mat.*

Co., 465 F.2d 1157 (5th Cir. 1972); *Morris v. Schlumberger, Ltd.*, 436 So.2d 1178, 1179 (La. App. 3d Cir.), *writ denied*, 441 So.2d 1121 (La. 1983) (citing *Morris v. Transworld Drilling Co.*, 365 So.2d 46, 47 (La. App. 3d Cir. 1978)). "[T]he federal law as to interest on a Jones Act judgment is substantive and is therefore controlling . . . " and federal law provides that "in a Jones Act case tried at law (rather than at admiralty) prejudgment interest is not available." *Morris v. Schlumberger, Ltd.*, 436 So.2d at 1179 (citing *Morris v. Transworld Drilling Co.*, 365 So.2d 46, 47 (La. App. 3d Cir. 1978)); *see also*, *Rains v. Diamond M. Co.*, 396 So.2d 306, 313 (La. App. 3d Cir. 1981), *writ denied*, 396 So.2d 623 (La. 1981), *cert. denied*, 455 U.S. 938, 102 S.Ct. 1427, 71 L.Ed.2d 648 (1982). Further, the jurisprudence interpreting La. Rev. Stat. 13:4203 explicitly states federal law determines the propriety of awarding prejudgment interest in a Jones Act case rather than the state law statute, La. Rev. Stat. 13:4203. *Canova v. Travelers Ins. Co.*, 406 F.2d 410, 412 (5th Cir. 1969). In addressing the Jones Act plaintiff's claim that federal law as to prejudgment interest was procedural rather than

substantive, the court in *Morris v. Transworld Drilling Co.* stated federal law as to interest on a Jones Act judgment is clearly substantive, and since a forum state is obliged to follow the substantive federal law in a claim based on a federal cause of action, it is controlling. Moreover, the Louisiana Third Circuit Court of Appeal, when faced with an identical conflict between La. Rev. Stat. 13:4203 and federal jurisprudence, found that federal courts have consistently held no prejudgment interest is to be awarded for claims made under the Jones Act. *Morris v. Transworld Drilling Co.*, 365 So.2d at 47 (citing *Barrios v. Louisiana Const. Mat. Co.*, 465 F.2d 1157 (5th Cir. 1972); *Sanford Bros. Boats, Inc. v. Vidrine*, 412 F.2d 958 (5th Cir. 1972); *Doucet v. Wheless Drilling Co.*, 467 F.2d 336 (5th Cir. 1972)); *Louisiana and Arkansas Railway Co. v. Pratt*, 142 F.2d 847 (5th Cir. 1944).

Petitioner also attempts to argue the Jones Act does not specifically forbid prejudgment interest if a plaintiff decides to have his case tried to a jury at law. The Jones Act allows a seaman plaintiff to sue for death or personal injury either in a federal court under admiralty jurisdiction, or in state or

federal court under legal jurisdiction, *i.e.*, at law. Still, the seaman must make a "trade-off:" if he elects to proceed at law, as the Petitioner did here, he can have a jury, but must forego a claim for prejudgment interest; if he elects to proceed in admiralty he can assert a claim for prejudgment interest, but relinquishes his right to a trial by jury. *Snyder v. Whittaker Corp.*, 839 F.2d 1085, 1094 (5th Cir. 1988). The law is clear prejudgment interest may not be recovered in a Jones Act case tried at law, *i.e.*, to a jury.

Further, this Honorable Court in *Monessen Southwestern Ry. Co. v. Morgan*, 486 U.S. 330, 331, 108 S.Ct. 1837, 1839 (1988), held that an award of prejudgment interest under the Federal Employers' Liability Act (hereinafter referred to as "FELA"), which the Jones Act incorporates, is a substantive issue and, therefore, must be settled according to federal law rather than state law. Thus, the plaintiff in *Monessen* was not entitled to prejudgment interest since federal law does not authorize awards of prejudgment interest in FELA actions. *Id.* This Honorable Court reasoned that in enacting FELA, Congress expressly

dispensed with other common-law doctrines of that era, and there is no indication Congress intended to abrogate the doctrine barring prejudgment interest *sub silentio*. Moreover, this Honorable Court noted a large number of lower federal courts and state courts have held prejudgment interest not to be available under FELA. *Id.* at 338, 108 S.Ct. 1837, 1844 (citing *Poleto v. Consolidated Rail Corp.*, 826 F.2d 1270, 1279 (3d Cir. 1987); *Wilson v. Burlington Northern R. Co.*, 803 F.2d 563, 566 (10th Cir. 1986); *Kozar v. Chesapeake and Ohio R. Co.*, 449 F.2d 1238, 1244 (6th Cir. 1971); *Chicago, M, St. P. and P.R. Co. v. Busby*, 41 F.2d 617, 619 (9th Cir. 1930); *Carmouche v. Southern Pacific Transportation Co.*, 734 S.W.2d 46, 47 (Tex. App. 1987); *Melin v. Burlington Northern R. Co.*, 401 N.W.2d 418, 420 (Minn. App. 1987); *Wicks v. Central R. Co.*, 129 N.J. Super 145, 147 332A. 488, 489, *cert. denied*, 66 N.J. 317, 311 A.2d 17 (1974); *Murmann v. New York, N.H. and H.R. Co.*, 258 N.Y. 447, 450, 180 N.E. 114, 115 (1932) (per curiam); *Mobile and O.R. Co. v. Williams*, 219 Ala. 238, 249, 121 So. 722, 731 (1929); *Bennett v. Atchison, T. v. S.F.R. Co.*, 187 Iowa 897, 903-904, 174 N.W.

805, 807 (1919); *Grow v. Oregon Short Line R. Co.*, 47 Utah 26, 29, 150 P. 970, 971 (1915). This Honorable Court maintained that Congress' failure to disturb such a longstanding, consistent judicial interpretation of a statute indicates Congress at least acquiesces in, and apparently affirmed, that interpretation. *Id.* at 330-31, 108 S.Ct. at 1839-40. Clearly, the jurisprudence surrounding both the Jones Act and FELA mandates a finding that federal law, not state law, governs the Petitioner's ability to recover prejudgment interest and plainly shows no dispute in the law that prejudgment interest should not be awarded in this case. The Louisiana Fourth Circuit Court of Appeal was correct when it stated: "The trial court was therefore clearly wrong in awarding the plaintiff such interest in this case, despite the general state rule which entitles plaintiff to such interest" (*see* Appendix B), and the Louisiana Supreme Court correctly denied the Petition for Writs of Review, implicitly finding the Louisiana Fourth Circuit's decision did not conflict with other state and federal decisions or with the United States Constitution.

Penrod acknowledges that when a Jones Act case is brought under admiralty jurisdiction, and thus is tried to the court rather than to a jury, the trial court does have discretion to award prejudgment interest. *Wright v. Ocean Drilling & Exploration Co.*, 444 So.2d 129, 136 (La. App. 4th Cir. 1983). However, when a judgment is entered on a jury verdict, the judge does not possess such authority. *Forbes v. A & P Boat Rentals, Inc.*, 689 F. Supp. 625, 633 (E.D.La. 1988). Under those circumstances, the factual question of whether the plaintiff is to receive prejudgment interest must be submitted to the jury. *Wright*, 444 So.2d at 136; *Ellender v. Texaco, Inc.*, 425 So.2d 291, 298 (La. App. 3d Cir. 1982). Failure to do so invalidates any such award. *Wright*, 444 So.2d at 136; *Ellender*, 425 So.2d at 298. As shown by the Jury Interrogatories and Verdict in the instant case (attached hereto as Appendix G), the question of Petitioner's entitlement to interest from the date of judicial demand was not a question submitted to the jury. Thus, Penrod respectfully submits this failure invalidates the state district court's award of prejudgment interest to the Petitioner, and

the Louisiana Fourth Circuit Court of Appeal properly held the failure invalidated the state district court's award of prejudgment interest to the Petitioner.

Additionally, since the jury's verdict was a lump sum damage award, and thus, did not differentiate between past and future losses, no prejudgment interest should have been awarded. This rule has consistently been upheld by Louisiana courts. In a case where the jury found the defendant liable under both the Jones Act and the General Maritime Law based on unseaworthiness, the appellate court reversed the award of prejudgment interest because it could not be determined under which theory of recovery the damages were allocated. *Osorio v. Waterman S.S. Corp.*, 557 So.2d 999, 10011 (La. App. 4th Cir. 1990). Likewise, in *Savoie v. McCall's Boat Rentals, Inc.*, 491 So.2d 94, 107 (La. App. 3d Cir. 1986), *writ denied*, 494 So.2d 542 (La. 1986), the jury verdict form did not provide an itemization of damages, but rather, provided only for a general lump sum award. The court in *Savoie* held the jury's award of prejudgment interest on the lump sum damages to be clearly erroneous. The court

ruled that when a damage award is made in a lump sum and no quantification of the amounts awarded for each element of damage is possible, a prejudgment interest award made with respect to the lump sum damage award is reversible in its entirety. *Savoie*, 491 So.2d at 107.

CONCLUSION

A Jones Act seaman plaintiff can sue in federal court under admiralty jurisdiction or in a state or federal court under legal jurisdiction. When a Jones Act seaman elects to sue in state court under legal jurisdiction, he can have a trial by jury but canot receive prejudgment interest. The reason for this result is that federal law, not state law, governs a Jones Act seaman's ability to recover prejudgment interest, and federal law does not allow does not allow the recovery of prejudgment interest on a Jones Act case tried at law and to a jury. Additionally, where, as in this case, a prejudgment interest award is made on lump sum damages awarded in a Jones Act case tried to a jury, with no quantification of the amounts awarded for each element, such award is reversible

in its entirety. Accordingly, Respondents respectfully request that Petitioner's Petition for Writ of Certiorari be denied.

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APPENDIX A -- OPINION OF THE SUPREME COURT OF THE STATE OF LOUISIANA DENYING PETITION FOR WRIT OF REVIEW, DATED OCTOBER 1, 1993, REPORTED AT 625 So.2d 180

THE SUPREME COURT OF THE STATE OF LOUISIANA

WILEY JACKSON MARSH

VS. NO. 93-C - 1726

PENROD DRILLING CORPORATION

- - - - - -

IN RE: Marsh, Wiley Jackson; - Plaintiff(s); Applying for Writ of Certiorari and/or Review; to the Court of Appeal, Fourth Circuit, Number 92CA-2760; Parish of Orleans Civil District Court Div. "K" Number 88-24554

- - - - - -

October 1, 1993
Denied.

PH
PFC
JLD
JCW
HTL
CDK
ROO

MARCUS, J., not on panel.

Supreme Court of Louisiana
October 1, 1993

/s/ Frans J. Labranche, Jr.
Clerk of Court
for the Court

APPENDIX B -- OPINION OF THE FOURTH CIRCUIT COURT OF APPEALS FOR THE STATE OF LOUISIANA, DATED MAY 27, 1993, REPORTED AT 619 So.2d 1124

WILEY JACKSON MARSH *NO. 92-CA-2760

versus *COURT OF APPEAL

PENROD DRILLING COMPANY *FOURTH CIRCUIT

*STATE OF LOUISIANA

******

APPEAL FROM
CIVIL DISTRICT COURT, FOR THE PARISH OF ORLEANS
NO. 88-24554, DIVISION "K"
HONORABLE RICHARD J. GANUCHEAU, JUDGE

******

STEVEN R. PLOTKIN
JUDGE

******

(Court composed of Judge Charles R. Ward and Judge Joan Bernard Armstrong and Judge Steven R. Plotkin)

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MAY 27 1993
REVERSED IN PART;
AFFIRMED IN PART;
RENDERED

Appendix B

Defendant Penrod Drilling seeks reversal of a trial court judgment awarding plaintiff, Wiley Jackson Marsh, prejudgment interest from the date of judicial demand on his Jones Act claim decided by a jury in state court. We reverse that portion of the judgment, deleting the award for prejudgment interest.

Facts

Marsh was injured on January 28, 1986 during the course and scope of his employrment with Penrod Drilling while attempting to move a misplaced drill collar with a 20-pound, five foot long, steel prybar, which slipped and struck him. At the time of the accident, plaintiff had been assigned for about two years to the vessel Penrod #60, a "jack-up" barge whose mission was to drill for oil. Marsh filed suit against Penrod, contending that the 4,000 pound drill collar should have been moved with a crane, a suggestion vetoed by his supervisor, who threatened termination.

Marsh filed suit in state court under the Jones Act, alleging that his injuries were caused by two inseparable causes -- the unseaworthy condition of the vessel and the negligence of Penrod.

After a trial, the jury returned a verdict finding both Penrod and Marsh negligent and apportioned fault 50-50 between them.

Appendix B

According to a stipulation in the appeal record, the jury awarded Marsh lump sum damages under the Jones Act, 46 U.S.C. §688, in the amount of $62,500.00. The jury was not asked and, therefore, did not award prejudgment interest from the date of the incident, January 28, 1986, or from the date of judicial demand, December 20, 1988. In signing the judgment, the trial court nevertheless included prejudgment interest from the date of judicial demand in favor of Marsh, citing LSA-R.S. 13:4203 and Corliss v. Elevating Boats, Inc., 599 So.2d 434 (La.App. 4 Cir. 1992).

Penrod filed a motion for a partial new trial, contending that prejudgment interest is not recoverable in a Jones Act case tried by a jury. When that motion was denied, Penrod appealed.

Analysis

Generally, under the Jones Act, an injured seaman may file suit to recover damages for death or personal injury either in a federal court under admiralty jurisdiction or in a state or federal court under legal jurisdiction. However, under the applicable federal jurisprudence, prejudgment interest is not available in Jones Act claims that are brought in law in state court rather than in admiralty in federal court. Jones Act, 6 U.S.C.A. § 688 (West's

1993), Ellender v. Texaco, 425 So.2d 219, 297 (La. App. 3d Cir. 1982); Forbes v. A & P Boat-Rentals, Inc., 689 F.Supp. 625, 633 (E.D. La. 1988). In choosing whether to pursue his claim in state or federal courut, "the seaman must make a tradeoff: if he elects to proceed at law, he can have a jury but must forego prejudgment interest; if he elects to proceed in admiralty, he can have prejudgment interest but no jury". Snyder v. Whittaker Corp., 839 F.2d 1085, at 1094 (5th Cir. 1988). Since the plaintiff in this case chose to proceed in state court before a jury, he is not entitled to prejudgment interest. The trial court was therefore clearly wrong in awarding theplaintiff such interest in this case, despite the general state rule which entitles plaintiffs to such interest.

The trial court improperly relied on Corliss in reaching his decision because that case involved an unseaworthiness claim tried in admiralty to a judge. The instant case was tried as a Jones Act case, tried to a state court jury. In fact, the court stated specifically in Corliss that the award in that case "was not made under state law, but rather under Federal law". Id. at 439. The Corliss court was simply following the general rule that prejudgment interest should be awarded in admiralty cases absent "peculiar

circumstances." See Noritake Co., Inc. v. M/V Hellenic Champion, 627 F.2d 724, 728 (5th Cir.1980).

When a Jones Act case is tried in a state court, the federal law, which would allow prejudgment interest, generally governs. However, the Jones Act specifically forbids prejudgment interest in cases tried under its auspices. Since the determination of whether prejudgment interest is appropriate is a substantive issue, the provisions of the act apply. Morris v. Schlumberger, Ltd., 436 So.2d 1178, 1179 (L-a. App. 3d Cir.), writ denied 441 So.2d 1221 (La. 1983). Interest is available on a Jones Act claim only from the date of judgment. Forbes, 289 F. Supp. at 633. Since judgment was entered in this case on July 24, 1992, interest should start to run on that date.

When prejudgment interest has been allowed in a maritime claim tried in state court under the Jones Act, the determination of whether to grant prejudgment interest has to be submitted to the jury. Havis v. Petroleum Helicopters, Inc., 664 F.2d 54 (5th Cir. 1981). In this case, the jury received no instructions and no evidence was presented concerning prejudgment interest. Additionally, the jury interrogatories did not address prejudgment

interest. In Ellender, 425 So. 2d at 291, the trial court's denial of prejudgment interest under similar facts was affirmed.

In the instant case, the damages were awarded in a lump sum, with no indication of the amount awarded for each element of damages. When prejudgment interest is improperly awarded in a lump sum award with undifferentiated elements of damages, the award of interest must be reversed in its entirety. See Savoie v. McCall's Boat Rentals, Inc,. 491 So.2d 94, 107 (La. App. 3d Cir. 1988).

Accordingly, the trial court judgment awarding prejudgment interest is reversed. The judgment is otherwise affirmed.

REVERSED IN PART;
AFFIRMED IN PART;
RENDERED.

APPENDIX C -- JUDGMENT AND REASONS FOR JUDGMENT OF THE CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS DATED JULY 24, 199S.

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS
STATE OF LOUISIANA

NO. 88-24554 DIVISION "K"

WILEY JACKSON MARSH
VERSUS
PENROD DRILLING CORPORATION

JUDGMENT

This matter came for trial by jury on the merits:

After considering the pleadings, the verdict and interrogatories of the jury and the law:

IT IS ORDERED, ADJUDGED AND DECREED that the fault in the accident forming the basis of these proceedings is hereby apportioned fifty percent (50%) to Penrod Drilling Corporation and fifty percent (50%) to Wiley Jackson Marsh.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there be judgment herein in favor of

plaintiff, Wiley Jackson Marsh, and against defendant, Penrod Drilling Corporation, in the sum of one hundred twenty five thousand dollars ($125,000.00) together with judicial intereat from the date of demand until paid, subject to a reduction of fifty percent (50%) for the fault of plaintiff.

The expert fees of plaintiff's experts are hereby fixed at $300.00 for each expert and are taxed as costs herein. All costs of these proceedings are assessed against defendant, Penrod Drilling Corporation.

JUDGMENT READ, RENDERED AND SIGNED this 24th day of July, 1992.

/s/ Richard J. Ganucheau.
JUDGE

Appendix C

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS
STATE OF LOUISIANA

NO. 88-24554 DIVISION "K"

WILEY JACKSON MARSH
VERSUS
PENROD DRILLING CORPORATION

REASONS FOR JUDGMENT

The Court has determined that judicial interest should be awarded from date of demand until paid based on La. R.S. 13:4203 and **Corliss v. Elevating Boats, Inc., et al**, No. 91-CA-1768, (La.App. 4 Cir. 1992).

New Orleans, Louisiana, this 24th day of July, 1992.

/s/ Richard J. Ganucheau.
JUDGE

APPENDIX D -- JONES ACT, 46 U.S.C. § 688

§ 688. Recovery for injury to or death of seaman

(a) Application of railway employee statutes; jurisdiction

Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located.

(b) Limitation for certain aliens; applicability in lieu of other remedy

(1) No action may be maintained under subsection (a) of this section or under any other maritime law of the United States for maintenance and cure or for damages for the injury or death of a person who was not a citizen or permanent resident alien of the United States at the time of the incident giving rise to the action if the incident occurred --

(A) while that person was in the employ of an enterprise engaged in the exploration, development, or production of offshore mineral or energy resources - including but not limited to drilling, mapping, surveying, diving, pipelaying, maintaining, repairing, constructing, or transporting supplies, equipment or

personnel, but not including transporting those resources by a vessel constructed or adapted primarily to carry oil in bulk in the cargo spaces; and

(B) in the territorial waters or waters overlaying the continental shelf of a nation other than the United States, its territories, or possessions. As used in this paragraph, the term "continental shelf" has the meaning stated in article I of the 1958 Convention on the Continental Shelf.

(2) The provisions of paragraph (1) of this subsection shall not be applicable if the person bringing the action establishes that no remedy was available to that person --

(A) under the laws of the nation asserting jurisdiction over the area in which the incident occurred; or

(B) under the laws of the nation in which, at the time of the incident, the person for whose injury or death a remedy is sought maintained citizenship or residency.

APPENDIX E --FEDERAL EMPLOYERS LIABILITY ACT, 45 U.S.C. § 51

§ 51. Liability of common carriers by railroad, in interstate of foreign commerce, for injuries to employees from negligence; employee defined

Every common carrier by railroad while engaging in commerce between any of the several States or Territories, or between any of the States and Territories, or between the District of Columbia and any of the States or Territories, or between the District of Columbia or any of the States or Territories and any foreign nation or nations, shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce, or, in case of the death of such employee, to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee; and, if none, then of such employee's parents; and, if none, then of the next of kin dependent upon such employee, for such injury or death resulting in while or in part from the negligence of any of the officers, agents, or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves, or other equipment.

Any employee of a carrier, any part of whose duties as such employee shall be the furtherance of interstate or foreign commerce; or shall, in any way directly or closely and substantially, affect such commerce as above set forth shall, for the purposes of this chapter, be considered as being employed by such carrier in such commerce and shall be considered as entitled to the benefits of this chapter.

APPENDIX F --LOUISIANA REVISED STATUTES 13:4203

§ 4203. Interest on judgments from judicial demand in ex delicto cases

Legal interest shall attach from date of judicial demand, on all judgments, sounding in damages, "ex delicto", which may be rendered by any of the courts.

Appendix G

APPENDIX G --JURY INTERROGATORIES AND VERDICT OF THE CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS, STATE OF LOUISIANA, DATED JULY 24, 1992

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS
STATE OF LOUISIANA

NO. 88-24554 DIVISION "K"

WILEY JACKSON MARSH
VERSUS
PENROD DRILLING CORPORATION

JURY INTERROGATORIES AND VERDICT

1. Was Penrod Drilling Corporaiton or its employees negligent in the accident on the Drilling Rig PENROD 60 on January 28, 1986?

_X_ Yes ____ No

2. Was this negligence a cause of any injuries sustained by plaintiff?

_X_ Yes ____ No

If you have answered questions 1 and 2 YES, CONTINUE; If not STOP HERE.

3. Was Wiley Jackson Marsh negligent in the accident on the Drilling Rig PENROD 60?

_X_ Yes ____ No

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4. Was his negligence a cause of any injuries he may have sustained?

__X__ Yes ____ No

5. What amount of fault expressed in a percentage do you attribute to:

Penrod Drilling Corporation	50 %
Wiley Jackson Marsh	50 %

NOTE: The percentages in question 5 when added together must total 100%.

6. What amount of damages, if any, do you award to plaintiff, Wiley Jackson Marsh?

$125,00.00

New Orleans, Louisiana

7-24-92
Date

s/ Elizabeth S. Stewart
Foreperson